

## **REMARKS**

### **I. Status of the Claims**

Claims 1-31 are currently pending in this Application. Claims 1, 12, 23, and 27 are in independent format. Applicant has cancelled claims 6 and 13, amended claims 1-5, 7-12, 14-20, 23-25, and 27, and added claims 28-31, herein.

The present response is intended to be fully responsive to the rejections raised by the Examiner and is believed to place the application in condition for allowance. Further, the Applicants do not concede any of the Examiner's comments not particularly addressed. Favorable reconsideration and allowance of the application is respectfully requested.

### **II. Interview Summary**

On September 10, 2008, Applicant's representatives, Eric R. Moran (Reg. No. 50,967) and James C. Gumina (Reg. No. 32,898), as well as the inventor David R. Curry, held a telephonic interview with Examiner John T. Kavanaugh to discuss this application. The following is a summary of the interview:

- The examiner was provided in advance with an embodiment of Applicant's presently claimed invention.
- The Jacko, DuPree, and Curry references were discussed as were the currently pending independent claims 1, 12, 23, and 27, as well as dependent claims 11, 22, and 26.
- No consensus was reached regarding claim patentability.

Applicant thanks the Examiner for his time and thoughtful consideration of the issues discussed.

### **III. Responses to Claim Rejections Under Section 112**

The Examiner rejected claims 5, 7-11, and 17-20 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has herein amended claims 1, 5, 7-11, and 17-20, and respectfully requests that the Examiner withdraw these rejections.

### **IV. Responses to Claim Rejections Under Sections 102 and 103**

The Examiner rejected claims 1, 2, 6-10, 12-16, 19-21, 23-25, and 27 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,958,447 to DuPree ("DuPree"). The Examiner rejected claims 1-4, 6-17, and 19-27 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,544,430 to Jacko ("Jacko"). The Examiner rejected claims 1-3, 6-10, 12-16, 19-22, 24-25, and 27 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,109,614 to Curry ("Curry"). The Examiner rejected claims 5 and 18 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Jacko. Applicant respectfully traverses.

Each of Applicant's pending independent claims now includes recitations directed to "one or more releasable fasteners" disposed along an outer perimeter of either an article of footwear or a sole portion of an article of footwear. In particular, claim 1 includes recitations directed to "one or more releasable fasteners disposed along at least a portion of the outer perimeter of the interchangeable upper portion and adapted for releasably fastening the interchangeable upper portion to an article of footwear. Claims 12 and 23 include recitations directed to "a sole defining an outer exterior perimeter, the

sole fixedly connected to the fixed upper portion such that the outer exterior perimeter of the sole generally corresponds with a substantial portion of the bottom exterior perimeter of the fixed upper portion to form an outer perimeter of the article of footwear" and "one or more releasable fasteners being generally disposed along at least a portion of the outer perimeter of the article of footwear." Claim 27 includes recitations directed to an "article of footwear defining an outer exterior perimeter" and "releasably fastening the interchangeable upper portion to the fixed upper portion along at least a portion of the outer exterior perimeter."

Applicant notes that the above recitations do not require that the one or more releasable fasteners be disposed on a sole or on a fixed upper, but contemplate that the recited one or more releasable fasteners can be disposed in either location as long as they are disposed along or generally along the recited outer perimeter.

In addition, each of Applicant's pending independent claims now includes recitations directed to "one or more alignment mechanisms" disposed away from the aforementioned outer perimeters. As recited in each currently pending independent claim, the one or more alignment mechanisms align the interchangeable upper portion with an article of footwear (or with a fixed upper portion of an article of footwear) **prior to releasably fastening** the interchangeable upper portion to the article of footwear.

Applicant's Figures 8 and 9, reproduced below, provide example locations for the "one or more releasable fasteners" (items 112 and 204) and the "one or more alignment mechanisms" (items 114 and 212):

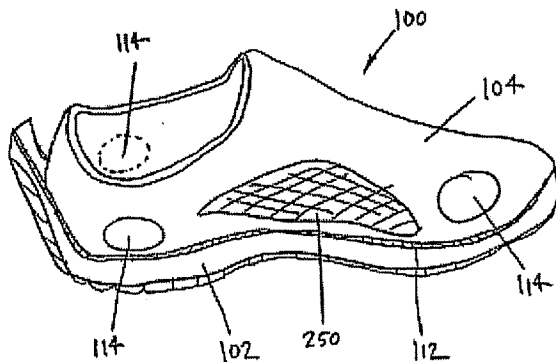


FIG. 8

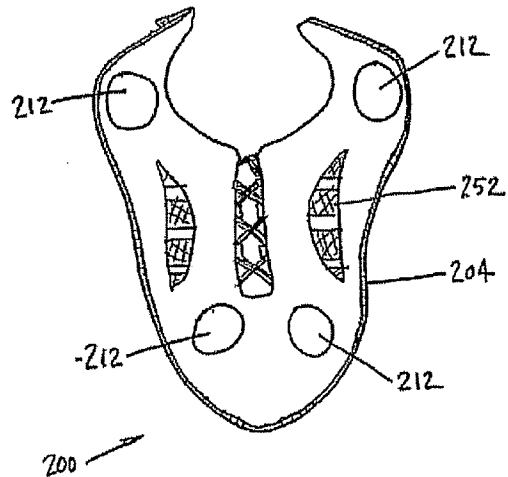


FIG. 9

Applicant respectfully submits that the references cited by the Examiner do not teach or reasonably suggest "one or more releasable fasteners" disposed along an outer perimeter of either an article of footwear or a sole portion of an article of footwear, or "one or more alignment mechanisms" disposed away from an outer perimeter of either an article of footwear or a sole portion of an article of footwear, as recited in Applicant's pending independent claims.

For example, regarding the DuPree and Curry references, each is directed to shoes having a low-top and high-top configuration. DuPree, Abstract ("The present invention is an athletic shoe with a breakaway high top."); Curry, Abstract ("A convertible shoe having a low-top and a high-top configuration is provided . . ."). Applicant respectfully submits that Applicant's claims patentably distinguish over each for at least the reason that neither teaches or reasonably suggests "one or more releasable fasteners" disposed along an outer perimeter of an article of footwear.

Regarding the Jacko reference, Applicant respectfully submits that Applicant's claims patentably distinguish over Jacko for at least the reason that Applicant's claims require different locations for the recited "one or more alignment mechanisms" and "one or more releasable fasteners." As recited in Applicant's pending independent claims, the "one or more releasable fasteners" are disposed along the outer perimeter of the article of footwear or sole, while the "one or more alignment mechanisms" are disposed away from the outer perimeter of the article of footwear or sole. In Jacko, the Examiner asserted that the same components, items 26 and 48, serve as both "one or more alignment means" and "one or more releasable fasteners." Office Action, July 1, 2008, at 3. Even under such a reading of Jacko, however, when fastened, both items 26 and 48 are disposed on the sole of the depicted shoe, and neither is disposed "away" from the outer perimeter, as recited in Applicant's pending claims. Jacko, Figs. 1-5.

Therefore, Applicant respectfully submits that the cited references, either alone or in combination, fail to disclose Applicant's presently claimed embodiments, and, for at least these reasons, Applicant respectfully submits that Applicant's pending independent claims 1, 12, 23, and 27 are allowable. In addition, without conceding the Examiner's assertions regarding the dependent claims, Applicant submits that the dependent claims are allowable for at least the reason that they depend from the allowable independent claims.

**V. Amendments Regarding "Means" Claim Limitations**

Applicant hereby clarifies that Applicant changed the claim term "alignment means" to "alignment mechanisms" to avoid a potential construction of this term under 35 U.S.C. § 112, paragraph 6.

**CONCLUSION**

In view of the foregoing, Applicant respectfully submits that all of the pending claims are in condition for allowance. Therefore, Applicant respectfully requests favorable reconsideration and allowance of all of the claims. If the Examiner would like to discuss any aspect of this case, the Examiner is invited to telephone the undersigned at 312-913-0001.

Respectfully submitted,  
McDONNELL BOEHNEN  
HULBERT & BERGHOFF LLP

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By: /Eric R. Moran/  
Eric R. Moran  
Reg. No. 50,967